

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA**

<p><b>STATE OF OKLAHOMA,</b></p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p><b>v.</b></p> <p><b>TYSON FOODS, INC., et al.,</b></p> <p style="text-align: center;"><b>Defendants.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Case No. 4:05-CV-00329-TCK-SAJ</b></p>
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**OBJECTIONS AND RESPONSES TO PETERSON FARMS’  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
SERVED MARCH 30, 2007**

COMES NOW, the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, (hereinafter “the State”) and hereby responds to Separate Defendant Peterson Farms, Inc.’s March 30, 2007 Interrogatories and Requests for Production of Documents to Plaintiff.

**Preliminary Objections**

Although Plaintiff acknowledges that the Federal Rules of Civil Procedure require supplementation of certain discovery answers and responses under specified circumstances, Plaintiff does not concede the validity of applicability of the “Instructions” (set forth on page 3 of Peterson Farms’ 2007 discovery requests) with respect to each and every Interrogatory and Request posed or submitted by Peterson Farms. Plaintiff will comply fully its respective discovery obligations as established by the Federal Rules of Civil Procedure, but will not, in the absence of a requirement imposed by the Federal Rules of Civil Procedure or a judicial order,

supplement any answer or response that is not already subject to the mandatory-supplementation provisions of the Federal Rules of Civil Procedure.

In addition, Plaintiff objects to paragraph 2 of Peterson Farms' "Instructions," in that an answer for a particular Interrogatory may be complete, responsive and sufficient even if the answer does not comply with each so-called "requirement" which Peterson Farms has attempted to impose upon Plaintiff in paragraph 2 of its "Instructions."

Finally, Plaintiff objects to, and decline to comply with, the remaining "Instructions" promulgated by Peterson Farms, to the extent that such "Instructions" attempt to impose obligations beyond those specifically established in the Federal Rules of Civil Procedure or in a judicial order.

### **GENERAL OBJECTIONS**

1. The State objects to these discovery requests to the extent that they seek the discovery of information that is protected by the attorney-client privilege, the work product doctrine, and / or any other applicable privilege or protection under state or federal law.

2. The State objects to these discovery requests to the extent that they seek the discovery of information that is already in the possession of Defendant Peterson Farms, Inc., is obtainable from another source that is more convenient, less burdensome or less expensive, or is as accessible to Defendant Peterson Farms, Inc. as it is to the State. As such, the burden of obtaining such sought-after information is substantially the same, or less, for the Defendant Peterson Farms, Inc. as it is for the State.

3. The State objects to these discovery requests to the extent that they are overly broad, oppressive, unduly burdensome, and expensive to answer. Providing answers to such discovery requests would needlessly and improperly burden the State.

4. The State objects to these discovery requests to the extent that they improperly seek identification of “all” documents for each request. Such discovery requests are thus overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of responsive information to such discovery requests.

5. The State objects to the extent that discovery sought is unreasonably cumulative or duplicative.

6. The State objects to these discovery requests to the extent that they do not state with the required degree of specificity and particularity what information is being sought. As such, such discovery requests are vague, indefinite, ambiguous and not susceptible to easily discernible meaning.

7. The State objects to these discovery requests to the extent that the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties’ resources, and the importance of the proposed discovery in resolving the issues.

8. The State objects to these discovery requests to the extent that they improperly attempt to impose obligations on the State other than those imposed or authorized by the Federal Rules of Civil Procedure.

9. The State objects to the definitions of these discovery requests to the extent that they improperly attempt to alter the plain meaning of certain words.

10. The State objects to the definition of “you”, “your” and “yourself” as being improper and overly broad. The State of Oklahoma is the plaintiff in this action. Consistent with this fact, the State will construe the terms “you”, “your” and “yourself” used in this discovery to mean the State of Oklahoma, and the State of Oklahoma will respond using this

definition and not the definition contained in Defendant Peterson Farms' definitions section.

11. By submitting these responses, the State does not acknowledge that the requested information is necessarily relevant or admissible. The State expressly reserves the right to object to further discovery into the subject matter of any information provided and to the introduction of such information into evidence.

**ANSWERS AND OBJECTIONS TO INTERROGATORIES**

**INTERROGATORY NO. 1:** Please fully describe any communications you have had with any current or former employee of or poultry grower who has ever contracted with Peterson Farms that occurred since the Lawsuit was filed, or pertained to any of the claims or defenses asserted in the Lawsuit.

**RESPONSE TO INTERROGATORY NO. 1:** The State objects to the definition of "you" as being improper and overly broad. The State is the plaintiff in this action. Consistent with this fact, the State will construe the term "you" used in this discovery to mean the State, and the State will respond using this definition and not the definition contained in Peterson Farms' definitions section.

The State also objects to the phrase "any current or former employee of or poultry grower who has ever contracted with Peterson Farms" as being vague, ambiguous, overly broad, and burdensome, and impossible to determine with any accuracy inasmuch Peterson Farms has not provided the State with a list of its current or former employees of Peterson Farms or a list of poultry growers who have ever contracted with Peterson Farms.

The State also objects to this Interrogatory on the ground that it is unlimited in time, and is therefore overly broad and burdensome.

The State also objects to this Interrogatory on the ground that it is overly broad and burdensome and is not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks communications that have occurred since the filing of the lawsuit that may not pertain to claims or defenses asserted in the lawsuit.

The State also objects to this Interrogatory on the ground that it is overly broad and burdensome in that it is impossible to identify, let alone "fully describe," each and every communication that would be responsive to this Interrogatory inasmuch as communications with current and former employees of Peterson Farms and current and former contract growers of Peterson Farms may have occurred, without limitation, in public meetings, private meetings, at speeches, presentations and conferences, on phone calls, by letter, by e-mail, in judicial proceedings (e.g., depositions), and in connection with performance of state statutory responsibilities.

The State also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the work product doctrine or any other applicable privileges or protections.

Subject to and without waiver of its general objections or these specific objections the State responds as follows: Examples of communications between the State current and former employees of Peterson Farms and / or current and former contract growers of Peterson Farms include, but are not limited to, the following:

- a. Communications with Mr. Kerry Kinyon. These communications occurred earlier this year. These communications, initiated by Mr. Kinyon, occurred by e-mail and by phone, and, to date, have dealt with the parameters of permissible communications, the circumstances under

which those permissible communications should occur, and, in very general terms, the subject matter of information that he might want to share with the State.

b. Communication with Mr. Barney Barnes. These communications have occurred over the course of the past several years. These communications, without limitation, have occurred by e-mail and face-to-face conversations. These communications have pertained to a wide range of poultry-related issues.

c. Communications with Ms. Bev Saunders. These communications have occurred over the course of the past several years. These communications, without limitation, have occurred by phone, e-mail and face-to-face conversations, as well as by deposition. These communications have pertained to a wide range of poultry-related issues.

**INTERROGATORY NO. 2:** Please specifically identify each parcel of land (with sufficient detail to allow Peterson Farms to physically locate such parcel, *i e* , by address, legal description or Global Positioning System coordinates), which you contend is, or has ever been (1) owned, operated, or controlled by Peterson Farms, and (2) a source location for any contaminate you allege has impaired or injured any natural resource of the State of Oklahoma in the IRW. In doing so, identify your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 2:** The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State

also objects to the definition of “you”, “your” and “yourself” as being improper and overly broad. The State of Oklahoma is the plaintiff in this action.

In addition, the State objects to the phrase “is or has ever been” as being vague, ambiguous, overly broad and burdensome, and impossible to determine within the context of this Interrogatory. The State further objects to Part 1 of this Interrogatory in that it requests information that is or should be in Peterson’s own files. Peterson Farms has or should have the name, address, and geographical location of every operation in the Illinois River Watershed which is, or ever has been, owned, operated, or controlled by Peterson.

Subject to and without waiving its general objections or these specific objections, the State responds as follows, that based on Peterson’s representations in its Second Amended Initial Disclosures at page 17, as of January 26, 2007, Peterson has identified 71 contract growers in the Illinois River Watershed, the names and locations of which are set forth in that document. Further, the State has asked Peterson to produce company and grower records prior to 2002 and Peterson has refused to do so. The State needs this information in order to more fully respond to this Interrogatory. The State also refers Defendant to the grower files produced on June 15, 2006 Bates Nos. OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846, as well as the State’s investigative documents produced pursuant to the Court’s Order of January 5, 2007 (Dkt. #1016) (See attached Exhibit 1, index of the State’s production, and specifically Bates Nos. STOK16502-16505, OK-PL001-5863). Additional information regarding Peterson’s operations in the watershed can be found by referring to the records of the individual county assessor where such operations are located and the facility and applicator files of the Oklahoma Department of Agriculture, Food and Forestry that will be made available at the next production at that agency.



In addition to the preceding objections, the State objects to the defined term “source location” and the phrase “each parcel of land” to the extent that they mischaracterize the State’s case. The State contends that the sources of the contaminants of concern in this case are not limited to a single parcel of land or spreading location, rather a source includes anywhere Peterson Farm’s poultry waste and its constituents have been deposited, stored, disposed of, placed, or otherwise come to be located due to the poultry growing operations, poultry waste handling operations, and poultry waste disposal activities of Peterson Farms, including but not limited to, the actions of waste applicators and any entity for which Peterson Farms is legally responsible. The “source location” as referenced in this Interrogatory, therefore, is construed to include without limitation, the grower buildings, structures, installations, equipment, storage locations, as well as the land upon which the poultry waste has been spread within the IRW.

The State is not required to rely on evidence directly documenting each individual release or instance of waste spreading and tracing it from the grower buildings, structures, installations, equipment, storage location, and/or spreading site to the injured resource. The State has already provided Defendants with sampling data produced pursuant to the Court’s Order of January 5 2007 (Dkt. #1016), and will continue to provide additional data as it is identified and developed. Additionally, the State will supplement its response with any additional specific, direct evidence it intends to rely on as it is identified and developed, except that the State will produce expert reports pursuant to the Court’s Scheduling Order (Dkt. #1075). Further, the State reserves the right to supplement this response when the State receives the information it has requested from Peterson Defendants and completes its investigation.

**INTERROGATORY NO. 3:** For each parcel of land identified in your answer to Interrogatory No. 2, please fully describe your factual basis for contending that such parcel is or



ever has been owned, operated, or controlled by Peterson Farms. In doing so, identify your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 3:** The State fully incorporates its response and objections to Interrogatory No. 2 as if stated fully herein.

**INTERROGATORY NO. 4:** If you contend that there is any parcel of land that is or ever has been a source location for any contaminate you allege has impaired or injured any natural resource of the State of Oklahoma in the IRW, which (1) you did not specifically identify in your answer to Interrogatory No. 2, and (2) for which you seek to hold Peterson Farms legally liable in the Lawsuit, please specifically identify each such parcel (with sufficient detail to allow Peterson Farms to physically locate such parcel, *i.e.*, by address, legal description or Global Positioning System coordinates). In doing so, identify your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 4:** The State incorporates its objections and response to Interrogatory No.2 as if fully stated herein.

**INTERROGATORY NO. 5:** For each parcel of land identified in your answer to Interrogatory No. 4, please fully describe your factual basis for contending that Peterson Farms is legally liable for the acts, omissions, or operations performed on such parcel. In doing so, identify your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 5:** The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel

in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State also objects to the definition of "you", "your" and "yourself" as being improper and overly broad. The State of Oklahoma is the plaintiff in this action.

Subject to and without waiving its general objections or these specific objections, the State responds: Poultry waste necessarily follows from the growing of poultry. Peterson Farms have had reason to recognize that in the ordinary course of its poultry growers doing their work in the usual or prescribed manner, a trespass or nuisance was likely to result. Accordingly, under the principles of Restatement (Second) Torts § 427B Peterson Farms is liable.

Additionally, Peterson Farms, by virtue of the nature of its relationship with the growers, including its contracts with growers, its control, involvement and oversight over growers, its ownership of the birds, and its participation in the disposal of poultry waste, make the growers agents and / or employees of Peterson Farms, and thus Peterson Farms is liable under principles of agency and / or respondeat superior.

Additionally, Peterson Farms owns or operates and / or has owned or operated growing operations in its own right, and thus Peterson Farms is liable.

Additionally, Peterson Farms, by virtue of its arrangements with the growers, including its contracts with growers, its control, involvement and oversight over growers, its ownership of the birds, and its participation in the disposal of poultry waste, make the Peterson Farms an "arranger" and thus liable.

Additionally, Peterson Farms, by virtue of owning or operating and / or having owned or operated growing operations in its own right, make Peterson Farms an "owner / operator" and thus liable.

Additionally, Peterson Farms, by virtue of the nature of its relationship with the growers, including its contracts with growers, their control, involvement and oversight over growers, its ownership of the birds, and its participation in the disposal of poultry waste, make Peterson Farms an "owner / operator" and thus liable.

Additionally, Peterson Farms, in its own right and by virtue of its relationship with its growers, is or has in the past been a generator of poultry waste and / or owner or operator of treatment, storage facilities for poultry waste who have contributed to or is contributing to the handling, storage, treatment, transportation or disposal of poultry waste, and thus is liable.

The State intends to demonstrate that Peterson Farms is legally liable through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State and its consultants. The State will call expert witnesses at trial who will demonstrate that land application of the Defendant's wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and rainfall: (1) washes off the constituents of these wastes and the land applied soils and they together run off of the area that was land applied and flow into IRW surface waters, and (2) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

- (A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to surface water runoff and seepage and leaching into the groundwater. Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will demonstrate the

“pathway” to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;

- (B) Showing that a chemical “finger print” is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants’ waste, the soils on which those wastes are applied, the groundwater, and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and ground waters, and the sediments of Lake Tenkiller;
- (C) Conducting Lake Tenkiller core analysis and comparing with (i) other lakes and (ii) poultry and waste growth and production;
- (D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;
- (E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;
- (F) Demonstrating that the density of poultry operations directly influences the concentrations of phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;
- (G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports. The expert opinions and reports are still being completed and will be provided to the Defendants in accordance with the Court's Scheduling Order (Dkt. #1075).

**INTERROGATORY NO. 6:** Please fully describe any environmental sampling that has been performed on or within one-half mile of any parcel identified in your answers to Interrogatory Nos. 2 and 4. The scope of this Interrogatory includes sampling performed by you or persons under your control or direction, as well as any other sampling information that is within your possession, custody or control. Your answer should include, but not be limited to, describing of the media sampled, the dates of sampling, the results of the sampling, the location of the sampling, and the sample identification numbers, as well as the identifying your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 6:** The State objects to the scope of this Interrogatory in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court for production of expert reports. The State further objects to producing "any environmental sampling" as it is vague, ambiguous and unduly burdensome. The State incorporates its response and objections to Interrogatory No. 2 as if fully stated herein.

Subject to and without waiving its general objections or these specific objections, in February of 2007 (in compliance with the Court's January 4, 2007 Order), the State produced information from sampling conducted by it in preparation for this litigation and continues to

supplement such production as additional data has been processed through internal QA/QC processes. See attached index of the State's production. Such results have been provided to all Defendants by agreement through counsel for Tyson. To date, the State has provided extensive sampling information which includes a spreadsheet of the sampling stations in the Illinois River Watershed, the coordinates for all sampling stations for samples taken in 2005 and 2006, the assigned sample identification number, the lab identification number, and the date the sample was taken. In addition, the State has provided the supporting information including, but not limited to, field notebooks, photographs, and lab results. By using the field notebooks and the sampling spreadsheets, the Defendants can locate any specific sampling site. The sampling program is ongoing, and additional information will be provided as it is developed and processed.

Further, the State has routinely performed sampling in the Illinois River Watershed. Pursuant to Rule 33(d), the State submits the following examples of documents showing and reporting on sampling in the Illinois River Watershed and the State reserves the right to supplement its response:

1. USGS Prepared in Cooperation with the Arkansas Soil and Water Conservation Commission – Phosphorus and Nitrogen Concentrations and Loads at Illinois River South of Siloam Springs, Arkansas, 1997 – 1999. OSRC 2-10
2. USGS National Water-Quality Assessment Program – Water-Quality Assessment of the Ozark Plateaus Study Unit, Arkansas, Kansas, Missouri, and Oklahoma – Nutrients, Bacteria, Organic Carbon, and Suspended Sediment in Surface Water, 1993-95 OSRC 2-11
3. USGS Preliminary Analysis of Phosphorus Concentrations and Fecal-Indicator Bacteria Counts at Selected Sites in the Illinois River Basin in Oklahoma, 1997-2001. OSRC Log 2-13
4. Coordinated Watershed and Restoration Protection Strategy for Oklahoma's Impaired Scenic Rivers (Per SB 972) 2002, 2004-2006 Update located at <http://www.environment.ok.gov/>.

5. Oklahoma's Beneficial Use Monitoring Program – Final Report 1998  
OSRC Log 2-15
6. Oklahoma's Beneficial Use Monitoring Program – 1999 Final Report  
OSRC Log 2-16
7. Oklahoma's Beneficial Use Monitoring Program raw data given at the OWRB document production and located in the sliding filing cabinets.
8. Nelson, M, Cash, W, Trost, K, Purtle, J. (2005) Illinois River 2004 Pollutant Loads at Arkansas Highway 59 Bridge. Arkansas Water Resources Center MSC-325.
9. Nelson, M, Cash, W, Trost, K, Purtle, J. (2006) Illinois River 2005 Pollutant Loads at Arkansas Highway 59 Bridge Arkansas Water Resources Center MSC-332.
10. Oklahoma Department of Environmental Quality (1998 -2004), Water Quality Assessment Integrated Reports. <http://www.deq.state.ok.us>
11. Public Water Supply reports located on the SDWIS (Public Water Supply Reports) database are too numerous to list herein, however, the State refers you to the indexes given to you at the Oklahoma Department of Environmental Quality which list all the public water supplies in the Illinois River watershed. Furthermore, if you simply choose one of the four counties in the watershed on the SDWIDS search page you can pull up all the public water supplies and see all their reporting and violation data.
12. USGS Surface Water Data for the Illinois River Basin, Water Quantity and Quality parameters located at:  
[http://ar.water.usgs.gov/sun/data-bin/get\\_data?control=multiple&group\\_nm=illinois](http://ar.water.usgs.gov/sun/data-bin/get_data?control=multiple&group_nm=illinois)
13. OWRB Water Quality Data Viewer, all stations in the Illinois River Watershed, including Lake Tenkiller, located at:  
<http://www.owrb.ok.gov/maps/server/wims.php>
14. Oklahoma Water Resources Board, U.S. Army Corps of Engineers and Oklahoma State University. 1996. Diagnostic and Feasibility Study on Tenkiller Lake, Oklahoma. Sponsored by USEPA. Available at <http://www.owrb.ok.gov/studies/reports/reports.php>.
15. Phosphorus Concentrations, Loads and Yields in the Illinois River Basin, Arkansas and Oklahoma, 1997-2001, p. 1, (<http://pubs.usgs.gov/wri/wri034168/>).
16. Phosphorus Concentrations, Loads and Yields in the Illinois River Basin, Arkansas and Oklahoma, 2000-2004, (<http://pubs.usgs.gov/sir/2006/5175/>).

The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports. The expert opinions and reports are still being



completed and will be provided to the Defendants in accordance with the Court's Scheduling Order (Dkt. #1075).

**INTERROGATORY NO. 7:** For each parcel of land identified in your answers to Interrogatory Nos. 2 and 4, please fully describe your basis for contending that such parcel is or ever has been a source site for any contaminate you allege has impaired or injured any natural resource of the State of Oklahoma in the IRW. In doing so, identify your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 7:** The State incorporates its responses and objections to Interrogatories No. 2, 4 and 5 as if stated fully herein.

**INTERROGATORY NO. 8:** Please specifically describe each item of physical damage (injury or impairment) to any natural resource of the State of Oklahoma in the IRW, which you contend is being or ever was caused or contributed to by any act or omission of Peterson Farms. Your answer should include, but not be limited to, identifying the specific resource and location, describing the specific damage (injury or impairment), and describing the factual causal connection between such damage (injury or impairment) and the alleged act or omission of Peterson Farms, as well as identifying your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 8:** The State objects to this Interrogatory on the ground that it improperly seeks identification of "each" item of responsive information, which renders it overly broad and oppressive. It may be impossible to locate "each" items of responsive information to this Interrogatory. In addition, the State objects to the phrase "is being or ever was" as being vague, ambiguous, overly broad and burdensome, and impossible to determine within the context of this Interrogatory.

The State further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection, or information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

Subject to and without waiving its general objections or these specific objections, the State submits as follows:

A. The following natural resources have sustained physical damage, injury or impairment by the acts and omissions of the Defendants, including Peterson Farms:

1. Surface Water -- Surface waters contained within the Oklahoma portion of the Illinois River Watershed, including but not limited to the surface waters of the Illinois River, Flint Creek, Baron Fork, Lee Creek, Peacheater Creek, Tyner Creek, Lake Tenkiller and any and all tributaries to the above.
2. Groundwater -- Groundwater contained within the Oklahoma portion of the Illinois River Watershed.
3. Biota -- Biota, including, but not limited to, birds, mammals, fish, and invertebrates, contained within the Oklahoma portion of the Illinois River Watershed.
4. Sediments/River/Stream/Lake Bottoms -- Sediment/river/stream/lake bottoms contained within the Oklahoma portion of the Illinois River Watershed.

5. Land -- Land impacted by poultry waste within the Oklahoma portion of Illinois River Watershed.

(B) The State anticipates that expert reports, to be submitted pursuant this Court's Scheduling Order, will support a claim of injury to the above identified natural resources and which is of a nature and magnitude sufficient to support a claim for damages to replace or restore each natural resource:

1. Existing data and new data (produced to Defendants on February 1, 3, and 8, 2007 and in subsequent productions) demonstrate that surface waters within the Oklahoma portion of the Illinois River Watershed have been injured in such magnitude sufficient to support a claim of damages. Increased nutrient and bacterial concentrations have resulted in degradation of water quality.
2. Existing data and new data (produced to Defendants on February 1, 3, and 8, 2007 and in subsequent productions) demonstrate that groundwater in the Oklahoma portion of the Illinois River Watershed has been injured in such magnitude sufficient to support a claim of damages. Increased nutrient and bacterial concentrations have resulted degradation of water quality.
3. Existing data and new data (produced to Defendants on February 1, 3, and 8, 2007 and in subsequent productions) demonstrate that biota in the Oklahoma portion of the Illinois River Watershed have been injured in such magnitude sufficient to support a claim of damages. Increased nutrient, metal and bacteria levels have affected community structure, decreased fish habitat and affected fish growth and health.
4. Existing data and new data (produced to Defendants on February 1, 3, and 8 and in subsequent productions) demonstrate that sediments/river/stream/lake bottoms in

the Oklahoma portion of the Illinois River Watershed have been injured in such magnitude sufficient to support a claim of damages. Bacteria, nutrients and metals have contaminated the sediments in the Illinois River Watershed and increased nutrient concentrations have affected community structures.

5. Existing data and new data (produced to Defendants on February 1, 3, and 8 and in subsequent productions) demonstrate that land in the Oklahoma portion of the Illinois River Watershed has been injured in such magnitude sufficient to support a claim of damages. Bacteria and nutrients have contaminated the land in the Illinois River Watershed and increased nutrient concentrations have affected contiguous and surface water quality and subsurface groundwater quality.

c) It is impossible to distinguish between damage, injury and harm caused by the phosphorus, bacteria and other constituents in the waste of birds owned or controlled by Peterson Farms from that caused by waste owned and controlled by the other Defendants. The State has suffered, and continues to suffer, an indivisible harm caused by the improper waste disposal of all of the Defendants. In further response, the State incorporates its objections and response to Interrogatory No. 5 as if fully stated herein.

**INTERROGATORY NO. 9:** For each item of physical damage (injury or impairment) identified in your answer to Interrogatory No. 8, please fully describe the economic damages, whether compensatory money damages, restitutionary money damages, or costs of restoration or replacement, which you contend are (or were) directly caused by any act or omission of Peterson Farms. Your answer should include, but not be limited to, for each element of damages, describing the quantification of the damages, the method of calculating the damages, as well as

identifying your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 9:** The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B).

Subject to and without waiving its general objections or these specific objections, the State is unable to provide the nature and amount of damages the State is seeking to recover until expert characterization of the injury is completed. The State continues to develop its damage model and will provide the Defendants with this information pursuant to the Court's Scheduling Order (Dkt. #1075).

The State will be using established methodologies to arrive at its natural damages estimate. Which methodology or methodologies it will ultimately decide to use fall within the attorney work product doctrine. The State will disclose this information pursuant to the Court's Scheduling Order when the State provides its expert damages report(s). The State reserves the right to supplement this Interrogatory as responsive information is identified, except that the State will produce expert reports pursuant to the Court's Scheduling Order (Dkt. # 1075).

**INTERROGATORY NO. 10:** Do you agree that from time to time, non-poultry growers acquire poultry litter and land apply such poultry litter within the IRW?

**RESPONSE TO INTERROGATORY NO. 10:** The State objects to this Interrogatory on the basis that it is vague and ambiguous as to the amount of poultry waste spread in the IRW by non-poultry growers, as well as the frequency at which it occurs. Subject to and without waiving its

general objections or these specific objections, the State responds that some amount of waste generated by at least one of the Defendants and entities for which at least one of the Defendants are legally responsible has been given to non-poultry growers who have then spread it on their land or the land of others in the IRW.

**INTERROGATORY NO. 11:** For each year from 1980 to the present, identify the quantity of poultry litter land applied in the IRW, as well as your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 11:** The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B).

The State has requested this information from all Defendants and all have declined to provide the information to the State. Subject to and without waiving its general objections or these specific objections, at present the State does not know the precise quantity of poultry waste that has been generated by the poultry industry and has been applied in the Illinois River Watershed for each year from 1980 to the present. However, upon information and belief, the general quantity of poultry waste generated by the poultry waste is substantial and has caused injury and damages to the State. Pursuant to Fed.R.Civ.P. 33(d), the following are examples of documents that refer to the amount of litter generated in the Illinois River Watershed during certain time periods:

1. Coordinated Watershed and Restoration Protection Strategy for Oklahoma's Impaired Scenic Rivers (Per SB 972) 2002, 2004-2006 Update located at <http://environment.ok.gov/>.
2. Basin-Wide Pollution Inventory for the Illinois River Comprehensive Basin Management Program located at:  
[http://www.okcc.state.ok.us/WQ/WQ\\_reports/REPORT043.pdf](http://www.okcc.state.ok.us/WQ/WQ_reports/REPORT043.pdf).
3. Peacheater Creek 319 Demonstration Project-Oklahoma Conservation Commission. Information relating to Peacheater Creek and the Illinois River Monitoring Project were located in OCC WQ Box 10C.
4. Bates Nos.OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846, produced on June 15, 2006, which show the amount of poultry waste which the growers report applying in the IRW in Oklahoma.

Additional information on the amount of poultry waste generated in the IRW is contained in the records of the Oklahoma Department of Agriculture, Food and Forestry to be produced at an upcoming production. The State will supplement this Interrogatory when the requested information is known, except that the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

**INTERROGATORY NO. 12:** For each year from 1980 to the present, identify the quantity of the poultry litter land applied within the IRW that was applied by persons who were not poultry growers, poultry companies, or persons operating under contract with poultry



growers or poultry companies, as well as your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 12:** The State incorporates its response and objections to Interrogatory No. 11 as if fully stated herein. The State does not know the precise quantity of poultry waste spread on land within the IRW that was applied by persons who were not poultry growers, poultry companies, or persons operating under contract with poultry growers or poultry companies. Further, the State contends that the identity or status of the individual(s) who applied poultry waste for which poultry defendants are legally liable is irrelevant to the State's case. The State will supplement this Interrogatory when the requested information is known except that the State will produce expert reports pursuant to the Court's Scheduling Order (Dkt. #1075).

**INTERROGATORY NO. 13:** If you contend that Peterson Farms is liable for the land application of poultry litter in the IRW by persons other than the poultry growers under contract with it, please fully explain the factual basis for your contention, and identify your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 13:** The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B).

Further, the State objects to this Interrogatory because it is overly burdensome to require the State to provide a narrative of its case and to identify all its evidence.

Subject to and without waiving its general objections or these specific objections, the State responds: Poultry waste necessarily follows from the growing of poultry. Peterson Farms have had reason to recognize that in the ordinary course of its poultry growers doing their work in the usual or prescribed manner, a trespass or nuisance was likely to result. Accordingly, under the principles of Restatement (Second) Torts § 427B Peterson Farms is liable.

Additionally, Peterson Farms, by virtue of the nature of its relationship with the growers, including its contracts with growers, its control, involvement and oversight over growers, its ownership of the birds, and its participation in the disposal of poultry waste, make the growers agents and / or employees of Peterson Farms, and thus Peterson Farms is liable under principles of agency and / or respondeat superior.

Additionally, Peterson Farms owns or operates and / or has owned or operated growing operations in its own right, and thus Peterson Farms is liable.

Additionally, Peterson Farms, by virtue of its arrangements with the growers, including its contracts with growers, its control, involvement and oversight over growers, its ownership of the birds, and its participation in the disposal of poultry waste, make the Peterson Farms an "arranger" and thus liable.

Additionally, Peterson Farms, by virtue of owning or operating and / or having owned or operated growing operations in its own right, make Peterson Farms an "owner / operator" and thus liable.

Additionally, Peterson Farms, by virtue of the nature of its relationship with the growers, including its contracts with growers, their control, involvement and oversight over growers, its ownership of the birds, and its participation in the disposal of poultry waste, make Peterson Farms an "owner / operator" and thus liable.

Additionally, Peterson Farms, in its own right and by virtue of its relationship with its growers, is or has in the past been a generator of poultry waste and / or owner or operator of treatment, storage facilities for poultry waste who have contributed to or is contributing to the handling, storage, treatment, transportation or disposal of poultry waste, and thus is liable.

The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

**INTERROGATORY NO. 14:** For each year from 1980 to the present, identify the quantity of the poultry litter land applied within the IRW that was imported into the IRW from poultry growing operations outside of the IRW, as well as your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 14:** The State incorporates its response and objections to Interrogatories No.11 and 12 as if fully stated herein. The State does not know the precise quantity of poultry waste spread on land within the Illinois River Watershed that was imported into the IRW from poultry growing operations outside of the IRW. The State will supplement this Interrogatory as relevant information is identified.

**INTERROGATORY NO. 15:** For each year from 1980 to the present, please identify the quantity of the poultry litter that was generated within the IRW, but not land applied in the IRW, as well as your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 15:** The State incorporates its response and objections to Interrogatories No. 11 and 12 as if fully stated herein. The State objects to this Interrogatory as vague and ambiguous as it does not define what “not land applied” means. Subject to and without waiver of this objection, the State does not know the precise quantity of poultry waste that was generated within the Illinois River Watershed but not spread on land in the IRW.

The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court’s Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

**INTERROGATORY NO. 16:** Please specifically identify each parcel of land within the IRW (with sufficient detail to allow Peterson Farms to physically locate such parcel, *i.e.*, by address, legal description or Global Positioning System coordinates), where you contend any poultry grower under contract with Peterson Farms (at any time) land applied poultry litter. In doing so, identify your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 16:** The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State will disclose information known or opinions held by expert consultants retained or employed in

anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

The State incorporates its response and objections to Interrogatory No. 2, as if stated fully herein. Subject to and without waiving its general objections or these specific objections, the State refers Peterson to the grower records and/or records of spreading waste on land required to be maintained by private commercial growers and applicators in Oklahoma. These records can be found in the documents made available to Peterson Farms by the Oklahoma Department of Agriculture, Food, and Forestry in response to Peterson Farms' Open Records Request and in documents produced by the State on June 15, 2006, Bates Nos. OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846. Also, see attached the State's index of documents produced pursuant to the Court's Order (Dkt. #1075), specifically Bates Nos. STOK16502-16505, OK-PL001-5863). Further, the State has requested this information from Peterson Defendants and Peterson has improperly refused to produce it. The State reserves the right to supplement this response after it receives the information it has requested from Peterson Farms and as additional information is identified and developed, except that the State will produce expert reports pursuant to the Court's Scheduling Order (Dkt. #1175).

**INTERROGATORY NO. 17:** For each parcel of land identified in your answer to Interrogatory No. 16, please identify by date and quantity any instance when poultry litter was land applied in an amount, which you deem to be in excess of the specific agronomic need of the crops or forage present at the time of the application. In doing so, identify your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 17:** The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

Subject to and without waiving its general objections or these specific objections, Peterson Defendants own files contain soil test information from their growers. Further, grower files at the Oklahoma Department of Agriculture, Food and Forestry ("ODAFF") contain soil test results. The grower files were produced on June 15, 2006 Bates Nos. OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846, and in response to Peterson's Open Records Request. These files will also be made available at the upcoming ODAFF document production.

Soil Test Phosphorus ("STP") is defined as pp2m (lbs/ac). One hundred percent phosphorus fertilizing sufficiency for Bermuda grass, Fescue, Corn and Wheat occurs at 65 STP. Therefore, any spreading of manure containing phosphorus applied to lands with an STP of 65 or greater is being spread "in excess of the specific agronomic need." Further, if land has an STP of less than 65 and the spreading of manure causes the STP to rise above 65 then the specific agronomic needs of that soil have been exceeded.

The State has not completed a list of all lands in excess of agronomic need and need not specifically identify each separate parcel with an STP of greater than 65. In those specific instances where the State will use other direct evidence of specific parcels with an STP greater than 65, the State will supplement this Interrogatory with the additional specific, direct evidence it will use.

**INTERROGATORY NO. 18:** Please fully describe your contention that Peterson Farms “has long known that poultry waste was an enormous contributor to phosphorus and other pollution in the IRW.” In doing so, identify your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 18:** The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B)

The State objects to these discovery requests to the extent that they improperly seek identification of “all” items or “each” item of responsive information or to state “with particularity” the basis for some contention of the State. Such discovery requests are thus overly broad and unduly burdensome. It may be impossible to locate “all” items or “each” item of responsive information to such discovery requests, or at this stage of the case to state “with particularity” the basis for a contention. It is improper by Interrogatory to require the State to provide a narrative account of its case.

Subject to and without waiving the foregoing objections, the State offers the following examples of Peterson’s knowledge of poultry waste as an enormous contributor to phosphorus



and other pollution in the IRW. As a general matter, subject to ongoing discovery, the Court in *City of Tulsa v. Tyson, et al.* 258 F. Supp. 2d, 1253, 1296 (N.D. Okl. 2003) vacated in connection with settlement, found that, “[a]lthough Poultry Defendants cite other sources of phosphorus in the Watershed, they admit in their response brief that they were aware in the 1990s that “phosphorus presented potential problems to the Watershed” and, therefore, attempted to address the problem by educating their growers regarding better litter management. Given these admissions, the Court finds Poultry Defendants had “reason to recognize that, in the ordinary course of [the growers] doing the work in the usual or prescribed manner, the trespass or nuisance is likely to result.” Peterson Farms was a defendant in the *City of Tulsa* case. In the response brief in question, the *City of Tulsa* defendants, including Peterson Farms, admitted that they became aware of the environmental impact of phosphorous in poultry waste in “approximately the mid-1990s.” Dkt. No. 255, Case No. 4:01-cv-00900-CVE-PJC, attached hereto as Exhibit 2 at ¶ 4, p. 4. No material difference exists between the polluting results of land application of poultry waste in the Eucha-Spavinaw watershed, which was the subject of the *City of Tulsa* case, and that of the Illinois River Watershed. Particularly as regards phosphorus and bacteria, it has long been understood in academic and industry circles that land application of wastes can lead to the environmental harms which are the subject of this suit.

(1) On December 5, 2004, a group of Integrators, including Peterson, published a paid advertisement in the *Tulsa World*, which admits that poultry waste is a source of excess phosphorus in the Illinois River Watershed. (Attached as Exhibit 3).

(2) In addition, on [date] the Integrators, including Peterson, published a “letter” to the Citizens of Oklahoma proposing various ways to improve management of poultry waste in

Oklahoma's scenic rivers, thereby admitting that poultry waste is an environmental contaminant. (Attached as Exhibit 4).

(3) In the Tulsa World on September 12, 2004, a group of integrators including Peterson stated "That's why we have been working with the State . . . to improve the management of poultry relate nutrients that might find their way into. . .Scenic river watersheds-We are prepared to do our part to take care of the poultry portion of the nutrient equation."

(4) In the Watershed Restoration Action Strategy (WRAS) for the Illinois River/Barron Fork Watersheds, July 1, 1999, Peterson Farms was part of the watershed advisory group. In this report and known to Peterson through their participation in the watershed advisory group is the knowledge that "[i]t has been suspected since the early 1980's that the Illinois River and Lake Tenkiller in northeastern Oklahoma were experiencing water quality degradation, primarily perceived as reduced clarity. Numerous studies verified that the lake and river were experiencing accelerating eutrophication from excessive nutrient loading caused by land use changes in the watershed. Research linked water quality problems to sources including both point sources and nonpoint sources such as the poultry and grazing industries in the basin. "

(5) Poultry Water Quality Handbook 2d. Ed., Printed with the Permission of the Water Quality Consortium, Peterson Farms, P.O. Box 248, Decatur, Arkansas, USA 72722

The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

**INTERROGATORY NO. 19:** Please fully describe the “State of Oklahoma’s past and present response costs under CERCLA § 107” incurred as a direct result of any act or omission by Peterson Farms. Your answer should include, but not be limited to, describing each response action, the costs incurred pursuant to such action, how such action was necessitated by an act or omission of Peterson Farms, how such costs were calculated, and describing your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 19:** The State objects to this Interrogatory to the extent that it seeks the discovery of information that is protected by the attorney-client privilege and/or the work product doctrine. The State further objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court’s Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

Without waiving its objections, because the improper waste disposal practices of all of the Poultry Integrator Defendants results in an indivisible injury to the State, the State has not calculated response costs pursuant to CERCLA §107 which are incurred as a direct result of any act or omission of Peterson Farms alone.

The State has incurred removal or remediation costs that are not inconsistent with the National Contingency Plan. 42 U.S.C. § 9607(a)(4)(A). The following list of removal or

remediation costs is not exhaustive and the State reserves the right to supplement as the State continues to review its records and to incur response costs.

1. Illinois River Watershed Implementation Program (1996)
2. Illinois River: Monitoring Small Watersheds to Assess WQ (1992)
3. Illinois River and Baron Fork Watershed Implementation Program (1999)
4. Tenkiller Clean Lakes Study
5. Periphyton/biological monitoring
6. Costs incurred for the monitoring, assessment and evaluation of the release or threat of release of hazardous substances from Defendants activities in the Illinois River Watershed.
7. State share of cost sharing measures to implement management practices to limit phosphorus pollution and migration within the IRW.
8. Costs incurred evaluating, assessing and/or implementing any removal or remedial action to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release.

**INTERROGATORY NO. 20:** If you contend that any poultry grower under contract (at any time) with Peterson Farms in the IRW has ever violated the provisions of his/hers/its Animal Waste Management Plan, Nutrient Management Plan, Comprehensive Nutrient Management Plan or equivalent, please fully describe such violation. Your answer should include, but not be limited to, for each such violation, describing the name and location of the poultry grower, the details of the violation, the date of the violation, as well as your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 20:** The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State further objects to this Interrogatory in that it is not limited by time frame. The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

Without waiving its objections, the State is not required to rely for proof of its case on evidence directly documenting each individual violation of the Animal Waste Management Plan, Nutrient Management Plan, Comprehensive Nutrient Management Plan by Peterson Farms or its contract growers. The State has already provided Defendants with sampling data produced pursuant to the Court's Order of January 5, 2007 (Dkt. #1016), and will continue to provide additional data as it is identified and developed. Additionally, the State will supplement its response with any additional specific, direct evidence it intends to rely on as it is identified and developed, except that the State will produce expert reports pursuant to the Court's Scheduling Order (Dkt. # 1075). Further, the State reserves the right to supplement this response when the State receives the information it has requested from Peterson Defendants and completes its investigation.

The State intends to demonstrate violations of animal waste management plans, nutrient management plans or comprehensive nutrient management plans through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State and its consultants. The State will call expert witnesses at trial who will demonstrate that land application of the Defendant's wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and rainfall: (1) washes off the constituents of these wastes and the land applied soils and they together run off of the area that was land applied and flow into IRW surface waters, and (2) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

(A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to surface water runoff and seepage and leaching into the groundwater. Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will demonstrate the "pathway" to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;

(B) Showing that a chemical "finger print" is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants' waste, the soils on which those wastes are applied, the groundwater, and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and ground waters, and the sediments of Lake Tenkiller;

- (C) Conducting Lake Tenkiller core analysis and comparing with (i) other lakes and (ii) poultry and waste growth and production;
- (D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;
- (E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;
- (F) Demonstrating that the density of poultry operations directly influences the concentrations of phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;
- (G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;
- (H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

The State has produced documents addressed by the Court's January 5, 2007, Order associated with the State's sampling scheme with the State's document productions and will continue these productions on a rolling basis. The State has produced grower files on June 15, 2006, Bates Nos. OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846 which may contain animal waste plan information which demonstrates violation of such plans. The State will also produce these records at the upcoming document production at the Oklahoma Department of Agriculture, Food, and Forestry.



**INTERROGATORY NO. 21:** Please fully describe each violation of the Oklahoma Registered Poultry Feeding Operations Act, and the regulations enacted pursuant thereto by Peterson Farms or any poultry grower with whom it is or has contracted for the raising of poultry within the IRW. Your answer should include, but not be limited to, for each such violation, describing the name and location of the violator, the details of the violation, the date of the violation, as well as your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 21:** The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response. The State further objects to this Interrogatory in that it is not limited by time frame.

The State is not required to rely for evidence of its case on evidence directly documenting each individual statutory violation, release or application of waste and tracing it from the bird to the injured resource. The State has already provided Defendants with sampling data produced pursuant to the Court's Order of January 5, 2007 (Dkt. #1016), and will continue to provide additional data as it is identified and developed. Additionally, the State will supplement its

response with any additional specific, direct evidence it intends to rely on as it is identified and developed, except that the State will produce expert reports pursuant to the Court's Scheduling Order (Dkt. #1075). Further, the State reserves the right to supplement this response when the State receives the information it has requested from Peterson Defendants and completes its investigation.

Without waiving its objections, the State intends to demonstrate violations of the Oklahoma Registered Poultry Feeding Operations Act through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State and its consultants. The State will call expert witnesses at trial who will demonstrate that land application of the Defendant's wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and rainfall: (1) washes off the constituents of these wastes and the land applied soils and they together run off of the area that was land applied and flow into IRW surface waters, and (2) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

(A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to surface water runoff and seepage and leaching into the groundwater. Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will demonstrate the "pathway" to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;

(B) Showing that a chemical “finger print” is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants’ waste, the soils on which those wastes are applied, the groundwater, and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and ground waters, and the sediments of Lake Tenkiller;

(C) Conducting Lake Tenkiller core analysis and comparing with (i) other lakes and (ii) poultry and waste growth and production;

(D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;

(E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;

(F) Demonstrating that the density of poultry operations directly influences the concentrations of phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;

(G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

The State has produced documents addressed by the Court's January 5, 2007, Order associated with the State's sampling scheme with the State's document productions and will continue these productions on a rolling basis. The expert opinions and reports that will show these violations are still being completed and will be provided to the Defendants in accordance with the Court's Order Scheduling Order (Dkt. #1075).

The State has produced grower files on June 15, 2006, Bates Nos. OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846 which may contain violation information. Further the State will reproduce these files at the upcoming Oklahoma Department of Agriculture, Food, and Forestry document production.

**INTERROGATORY NO. 22:** Please fully describe each violation of the Oklahoma Concentrated Animal Feeding Operations Act, and the regulations enacted pursuant thereto by Peterson Farms or any poultry grower with whom it is or has contracted for the raising of poultry within the IRW. Your answer should include, but not be limited to, for each such violation, describing the name and location of the violator, the details of the violation, the date of the violation, as well as your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 22:** The State is not making a claim of violation of the CAFO Act against Peterson Farms.

**INTERROGATORY NO. 23:** For each year from 1980 to the present, please identify the quantity of fertilizer (whether commercial or organic), other than poultry litter, that was land applied within the IRW, and identify your evidence, whether testimonial or documentary, which you contend supports your answer.

**RESPONSE TO INTERROGATORY NO. 23:** The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State further objects to this Interrogatory in that it is not limited by time frame. The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

Subject to and without waiver of these objections, at present the State does has not precisely quantified how much fertilizer (whether commercial or organic) was land applied in the Illinois River Watershed for each year from 1980 to the present. Pursuant to Rule 33(d), documents responsive to this request may be found at the Oklahoma Department of Agriculture Food and Forestry document production. The Commercial Fertilizer section may have documents which show the amount of fertilizer sold in the counties that make up the IRW, but not necessarily the amount applied in the IRW. The State will supplement this response when responsive information is identified, except that the State will produce expert reports pursuant to the Court's Scheduling Order (Dkt. # 1075).

**INTERROGATORY NO. 24:** Please fully describe the status of Oklahoma's promulgation of Total Maximum Daily Loads for any water body or water course within the IRW, including an explanation as to why Oklahoma has not promulgated such TMDLs.

**RESPONSE TO INTERROGATORY NO. 24:** The State objects to this Interrogatory to the extent it asks the State to "fully" describe the status. The State is currently working on a Nutrient TMDL for the Illinois River, Barron Fork Creek and Lake Tenkiller. The State has not yet promulgated a nutrient TMDL because of technical issues. Those technical issues include calibrating models, integration of additional data, and interoperability of modeling tools. The State will supplemental this response as additional information is identified.

**INTERROGATORY NO. 25:** If you contend that Peterson Farms' liability derives, to any degree, from the formulation of its poultry feeds, please describe the specific formulation, including the constituent elements thereof, which you contend is proper.

**RESPONSE TO INTERROGATORY NO. 25:** The State objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

The State further objects to this Interrogatory in that it requests information the disclosure of which would be a violation of the Court's Confidentiality Order. The State has no contention as to the proper feed formulation to be used by Peterson Farms.



## VERIFICATION

[illegible]

I, Miles Tolbert, being of legal age, hereby depose and state that I have read the foregoing responses to these interrogatories and that they are true and correct, to the best of my knowledge and belief, and that I furnish such responses based on consultation with the representatives of the State of Oklahoma.



Miles Tolbert  
Secretary of the Environment  
State of Oklahoma

Signed and subscribed to before me on this 1<sup>st</sup> day of <sup>June</sup>~~April~~ 2007

Notary Public

My Commission Expires:

11/09/10

My Commission Number:

02017963

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** Please produce all documents identified in your answer to Interrogatory No. 2.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request.

Subject to and without waiving its general objections or these specific objections, no documents are referred to in Response to Interrogatory No. 2 .

**REQUEST FOR PRODUCTION NO. 2:** Please produce all documents identified in your answer to Interrogatory No. 3.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request.

Subject to and without waiving its general objections or these specific objections, no documents are referred to in Response to Interrogatory No. 3.

**REQUEST FOR PRODUCTION NO. 3:** Please produce all documents identified in your answer to Interrogatory No. 4.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request.

Subject to and without waiving its general objections or these specific objections, no documents are referred to in responding to Response to Interrogatory No. 4.

**REQUEST FOR PRODUCTION NO. 4:** Please produce all documents identified in your answer to Interrogatory No. 5.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request.

Subject to and without waiving its general objections or these specific objections, no documents were identified in response to Interrogatory No. 5.

**REQUEST FOR PRODUCTION NO. 5:** Please produce all documents identified in your answer to Interrogatory No. 6.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, see the response to Interrogatory No. 6.

**REQUEST FOR PRODUCTION NO. 6:** Please produce all documents identified in your answer to Interrogatory No. 7.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request.

Subject to and without waiving its general objections or these specific objections, no documents were identified in Response to Interrogatory No. 7.

**REQUEST FOR PRODUCTION NO. 7:** Please produce all documents identified in your answer to Interrogatory No. 8.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, see the attached index of the State’s Court Ordered Production.

**REQUEST FOR PRODUCTION NO. 8:** Please produce all documents identified in your answer to Interrogatory No. 9.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request.

Subject to and without waiving its general objections or these specific objections, no documents were identified in response to Interrogatory No. 9.

**REQUEST FOR PRODUCTION NO. 9:** Please produce all documents identified in your answer to Interrogatory No. 10.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request.

Subject to and without waiving its general objections or these specific objections, no documents were identified in response to Interrogatory No. 10.

**REQUEST FOR PRODUCTION NO. 10:** Please produce all documents identified in your answer to Interrogatory No. 11.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, see the response to Interrogatory No. 11.

**REQUEST FOR PRODUCTION NO. 11:** Please produce all documents identified in your answer to Interrogatory No. 12.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, see the response to Interrogatory No. 11.

**REQUEST FOR PRODUCTION NO. 12:** Please produce all documents identified in your answer to Interrogatory No. 13.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, no documents were identified in response to Interrogatory No. 13.

**REQUEST FOR PRODUCTION NO. 13:** Please produce all documents identified in your answer to Interrogatory No. 14.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents

or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, see the response to Interrogatory No. 11

**REQUEST FOR PRODUCTION NO. 14:** Please produce all documents identified in your answer to Interrogatory No. 15.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, see the response to Interrogatory No. 11

**REQUEST FOR PRODUCTION NO. 15:** Please produce all documents identified in your answer to Interrogatory No. 16.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.



Subject to and without waiving its general objections or these specific objections, see the response to Interrogatory No. 11

**REQUEST FOR PRODUCTION NO. 16:** Please produce all documents identified in your answer to Interrogatory No. 17.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, no documents were identified in response to Interrogatory No. 17.

**REQUEST FOR PRODUCTION NO. 17:** Please produce all documents identified in your answer to Interrogatory No. 18.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, see response brief in *City of Tulsa* case where defendants, including Peterson Farms, admitted that they became aware of the environmental impact of phosphorous in poultry waste in

“approximately the mid-1990s.” Dkt. No. 255, Case No. 4:01-cv-00900-CVE-PJC, attached hereto as Exhibit 2 at ¶ 4, p. 4

**REQUEST FOR PRODUCTION NO. 18:** Please produce all documents identified in your answer to Interrogatory No. 19.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 18:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court for production of expert reports. The State will supplement this request when such information becomes available

**REQUEST FOR PRODUCTION NO. 19:** Please produce all documents identified in your answer to Interrogatory No. 20.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 19:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, see the Response to Interrogatory No. 20.

**REQUEST FOR PRODUCTION NO. 20:** Please produce all documents identified in your answer to Interrogatory No. 21.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 20:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, see the response to Interrogatory No.21.

**REQUEST FOR PRODUCTION NO. 21:** Please produce all documents identified in your answer to Interrogatory No. 22.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 21:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, see the response to Interrogatory No.22.

**REQUEST FOR PRODUCTION NO. 22:** Please produce all documents identified in your answer to Interrogatory No. 23.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 22:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents

or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, documents will be produced at the Oklahoma Department of Agriculture, Food and Forestry document production.

**REQUEST FOR PRODUCTION NO. 23:** Please produce any notes, transcripts, letters, recordings or other documents, which memorialize any interview or communication with any current or former employee of or poultry grower under contract with Peterson Farms.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 23:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney client, work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, See Plaintiff’s answer to Interrogatory No. 1.

**REQUEST FOR PRODUCTION NO. 24:** Please produce any document authored by, obtained from, or provided to you by any current or former employee of or poultry grower under contract with Peterson Farms, other than (1) those documents you previously produced through any agency of the State of Oklahoma, or (2) those documents produced to you by Peterson Farms in the Lawsuit.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 24:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney client, work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, See Plaintiff’s answer to Interrogatory No. 1.

**REQUEST FOR PRODUCTION NO. 25:** Please produce all documents related to the video spot entitled “‘Clean Water’ 60 Seconds,” which is located at <http://www.edmondsonagain.com/media-room.asp>, including, but not limited to, all communications, scripts, production notes, drafts, copies of all video and audio created on location (prior to editing), photographs, maps, invoices, itineraries, and memoranda.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 25:** The State objects to this request in that General Edmondson's re-election campaign is not an agency of the State. The State does not represent the re-election campaign, and the re-election campaign is not a party to this lawsuit. The State further objects to this request on the ground that it is improper and unduly burdensome to request from a party documents relating to the statements or contentions of a non-party.

**REQUEST FOR PRODUCTION NO. 26:** Please produce all documents relating to communications between the Oklahoma Attorney General or the Office of the Attorney General, and Save the Illinois River (“STIR”) or any of its members or representatives.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, the State has not yet produced documents to Defendants from the Office of the Attorney General. Such non-privileged responsive documents will be produced at a time and place agreed to by the parties. To the extent that any copies of such documents were anecdotally kept in any files at agencies where documents have been produced, non-privileged documents were provided for inspection and copying at that agency.

**REQUEST FOR PRODUCTION NO. 27:** Please produce all documents relating to communications between the Oklahoma Secretary of the Environment or the Office of the Secretary of the Environment, and Save the Illinois River (“STIR”), or any of its members or representatives.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, all non-privileged responsive documents were produced for inspection and copying at the on-site production for the Office of the Secretary of the Environment. The State will supplement this response should additional responsive information become available.

**REQUEST FOR PRODUCTION NO. 28:** Please produce all documents that relate to specific instances when the substance, “Poultry Litter” has “washed into any lake or river” in the IRW as stated at <http://www.edmondsonagain.com/poultry-litter-facts.asp>.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 28:** The State objects to this request in that General Edmondson's re-election campaign is not an agency of the State. The State does not represent the re-election campaign, and the re-election campaign is not a party to this lawsuit. The State further objects to this request on the ground that it is improper and unduly burdensome to request from a party documents relating to the statements or contentions of a non-party. .

**REQUEST FOR PRODUCTION NO. 29:** Please produce all documents that support the contention that Peterson Farms adds zinc to its poultry feed as stated at <http://www.edmondsonagain.com/poultry-litter-facts.asp>.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 29:** The State objects to this request in that General Edmondson's re-election campaign is not an agency of the State. The State does not represent the re-election campaign, and the re-election campaign is not a party to this lawsuit. The State further objects to this request on the ground that it is improper and unduly burdensome to request from a party documents relating to the statements or contentions of a non-party.



**REQUEST FOR PRODUCTION NO. 30:** Please produce all documents that support the contention that Peterson Farms adds copper to its poultry feed as stated at <http://www.edmondsonagain.com/poultry-litter-facts.asp>.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 30:** The State objects to this request in that General Edmondson's re-election campaign is not an agency of the State. The State does not represent the re-election campaign, and the re-election campaign is not a party to this lawsuit. The State further objects to this request on the ground that it is improper and unduly burdensome to request from a party documents relating to the statements or contentions of a non-party

**REQUEST FOR PRODUCTION NO. 31:** Please produce all documents that support the contention that Peterson Farms adds arsenic to its poultry feed as stated at <http://www.edmondsonagain.com/poultry-litter-facts.asp>.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 31:** The State objects to this request in that General Edmondson's re-election campaign is not an agency of the State. The State does not represent the re-election campaign, and the re-election campaign is not a party to this lawsuit. The State further objects to this request on the ground that it is improper and unduly burdensome to request from a party documents relating to the statements or contentions of a non-party. .

**REQUEST FOR PRODUCTION NO. 32:** Please produce all documents that support the contention that Peterson Farms adds hormones to its poultry feed as stated at <http://www.edmondsonagain.com/poultry-litter-facts.asp>.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 32:** The State objects to this request in that General Edmondson's re-election campaign is not an agency of the State. The

State does not represent the re-election campaign, and the re-election campaign is not a party to this lawsuit. The State further objects to this request on the ground that it is improper and unduly burdensome to request from a party documents relating to the statements or contentions of a non-party.

**REQUEST FOR PRODUCTION NO. 33:** Please produce all documents that compare “water near the fields where litter has been spread” to “untreated sewage” as stated at <http://www.edmondsonagain.com/poultry-litter-facts.asp>.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 33:** The State objects to this request in that General Edmondson's re-election campaign is not an agency of the State. The State does not represent the re-election campaign, and the re-election campaign is not a party to this lawsuit. The State further objects to this request on the ground that it is improper and unduly burdensome to request from a party documents relating to the statements or contentions of a non-party.

**REQUEST FOR PRODUCTION NO. 34:** Please produce all documents identified in your answer to Interrogatory No. 25.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 34:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item information responsive to the request.

Subject to and without waiving its general objections or these specific objections, see the response to Interrogatory No.25.

**REQUEST FOR PRODUCTION NO. 35:** Please produce all documents that relate to the sampling of any poultry feed produced by any Defendant in the Lawsuit, other than documents produced to you in the Lawsuit by any such Defendant.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 35:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State further objects to the scope of this request in that it calls for the State to reveal attorney work product and the work product of experts prior to the schedule established by the Court.

Subject to and without waiving its general objections or these specific objections, the State will produce documents responsive to this request at a mutually agreeable time and place.

**REQUEST FOR PRODUCTION NO. 36:** Please produce all documents related to the impact of the poultry industry on the economy of the State of Oklahoma (which includes its political subdivisions and citizens), including, but not limited to, tax revenue, employment, capital investments, and consumer spending.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 36:** The State objects to this request on the ground that it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and that it is, therefore, irrelevant. This case is about the conduct of the Defendants and the effect of that conduct on the environment of Oklahoma. Consideration by the fact-finder of any potential economic effect of a verdict in a civil litigation on non-parties is improper.

**REQUEST FOR PRODUCTION NO. 37:** Please produce any documents relating to any loss of tourism, or tourism revenue in the IRW directly attributable to poultry operations within the IRW.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 37:** The State objects to this request to the extent it seeks information protected by the attorney client privilege or work product protection. Further, the State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request.

Subject to and without waiving its general objections or these specific objections, the State has not yet conducted an on-site document production from the Oklahoma Department of Tourism. To the extent that responsive documents can be found there, such non-privileged documents will be produced for inspection and copying by Defendants at a mutually agreed-upon date and time. To the extent that such non-privileged documents were or are contained in the files of state agencies for which on-site productions have been conducted, they were provided for inspection and copying at that time. The State will supplement this response as responsive information is identified. Expert reports will be produced in accordance with the Court’s Scheduling Order (Dkt. # 1075).

**REQUEST FOR PRODUCTION NO. 38:** Please produce any documents that relate to any injury to human health in the IRW directly attributable to any act or omission of Peterson Farms.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 38:** The State objects to this request to the extent it seeks information protected by the attorney client privilege or work product protection. Further, the State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). Subject to and without waiving its general objections or these specific objections, the following documents relate to injury to human health:

Avery, L. M., Killham, K., and Jones, D. L. (2005), Survival of E. Coli O157:H7 in Organic Wastes Destined for Land Application. *Journal of Applied Microbiology* 98(4): 814-22. (see pages 814-815, 820-821).

Coyne, M. S. and Blevins, R. L. (1995), Fecal Bacteria in Surface Runoff from Poultry-Manured Fields. *Animal Waste and the Land-Water Interface*. Boca Raton, Lewis Publishers: 77-87. (see pages 77, 80, 82, 85-86).

Crane, S.R., Westerman, P.W., and Overcash, M. R. (1980), Dieoff of Fecal Indicator Organisms Following Land Application of Poultry Manure. *Journal of Environmental Quality*, 9: 531-537. (see pages 531, 537).

Davis, J. V. and Bell, R. W. (1998), Water-Quality Assessment of the Ozark Plateaus Study Unit, Arkansas, Kansas, Missouri, and Oklahoma; Nutrients, Bacteria, Organic Carbon, and Suspended Sediment in Surface Water, 1993-95. United States Geological Survey 98-4164. 63 p. (see pages 1, 5, 7, 10, 19, 37-38).

Davis, R. K., Hamilton, S., and Van Brahana, J. (2005), Escherichia Coli Survival in Mantled Karst Springs and Streams, Northwest Arkansas Ozarks, U.S.A. *Journal of the American Water Resources Association* 41(6): 1279-1287 (see pages 1279-1280, 1284-1286).

Mawdsley, J. L., Bardgett, R. D., Merry, R. J., Pain, B. F., and Theodorou, M. K. (1995), Pathogens in Livestock Waste, Their Potential for Movement through Soil and Environmental Pollution. *Applied Soil Ecology : A Section of Agriculture, Ecosystems & Environment* 2(1): 1-15. (see pages 1-12).

Schlottmann, A. L. 2000. Reconnaissance of the Hydrology, Water Quality, and Sources of Bacterial and Nutrient Contamination in the Ozark Plateaus Aquifer System and Cave Springs Branch of Honey Creek, Delaware County, Oklahoma, March 1999-March 2000. Water-Resources Investigations Report 00-4210, available at <http://pubs.usgs.gov/wri/wri004210/>

Coordinated Watershed Restoration and Protection Strategy for Oklahoma's Impaired Scenic Rivers (SB 972 Report), issued in 2003, 2004, 2005, and 2006. Full text of reports are located at <http://www.ose.state.ok.us/documents.html#972>.

Office of the Secretary for the Environment. 2003. Coordinated Watershed Restoration and Protection Strategy for Oklahoma's Impaired Scenic Rivers (per Senate Bill 972, 2<sup>nd</sup> Session of the 48<sup>th</sup> Legislature, 2002). Available at <http://www.environment.ok.gov/documents.html>.

Office of the Secretary for the Environment. 2004. Coordinated Watershed Restoration and Protection Strategy for Oklahoma's Impaired Scenic Rivers (per Senate Bill 972, 2<sup>nd</sup> Session of the 48<sup>th</sup> Legislature, 2002), Calendar Year 2003 Update Report. Available at <http://www.environment.ok.gov/documents.html>.

Office of the Secretary for the Environment. 2005. Coordinated Watershed Restoration and Protection Strategy for Oklahoma's Impaired Scenic Rivers (per Senate Bill 972, 2<sup>nd</sup> Session of the 48<sup>th</sup> Legislature, 2002), 2005 Update. Available at <http://www.environment.ok.gov/documents.html>.

Office of the Secretary for the Environment. 2006. Coordinated Watershed Restoration and Protection Strategy for Oklahoma's Impaired Scenic Rivers (per Senate Bill 972, 2<sup>nd</sup> Session of the 48<sup>th</sup> Legislature, 2002), 2006 Update. Available at <http://www.environment.ok.gov/documents.html>.

Public Water Supply reports located on the SDWIS (Public Water Supply Reports) database are too numerous to list herein, however, the State refers you to the indexes given to you at the Oklahoma Department of Environmental Quality which list all the public water supplies in the Illinois River watershed. Furthermore, if you simply choose one of the four counties in the watershed on the SDWIDS search page you can pull up all the public water supplies and see all their reporting and violation data.

USGS Surface Water Data for the Illinois River Basin, Water Quantity and Quality parameters located at: [http://ar.water.usgs.gov/sun/data-bin/get\\_data?control=multiple&group\\_nm=illinois](http://ar.water.usgs.gov/sun/data-bin/get_data?control=multiple&group_nm=illinois)

OWRB Water Quality Data Viewer, all stations in the Illinois River Watershed, including Lake Tenkiller, located at: <http://www.owrb.ok.gov/maps/server/wims.php>

Oklahoma Water Resources Board, U.S. Army Corps of Engineers and Oklahoma State University. 1996. Diagnostic and Feasibility Study on Tenkiller Lake, Oklahoma. Sponsored by USEPA. Available at <http://www.owrb.ok.gov/studies/reports/reports.php>.

Phosphorus Concentrations, Loads and Yields in the Illinois River Basin, Arkansas and Oklahoma, 1997-2001, p. 1, (<http://pubs.usgs.gov/wri/wri034168/>).

Phosphorus Concentrations, Loads and Yields in the Illinois River Basin, Arkansas and Oklahoma, 2000-2004, (<http://pubs.usgs.gov/sir/2006/5175/>).



Oklahoma Department of Environmental Quality Fact Sheet, "Water, Swimming in Oklahoma's Lakes, Rivers, and Streams" located at:  
<http://www.deq.state.ok.us/factsheets/water/swimming.pdf>

The State will supplement this request as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

**REQUEST FOR PRODUCTION NO. 39:** Please produce any documents that support the contention that Peterson Farms is causing (or has caused) an imminent and substantial endangerment to human health in the IRW.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 39:** The State objects to this request to the extent it seeks information protected by the attorney client privilege or work product protection. Further, the State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State objects to this request to the extent that it seeks identification of "all" documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate "all" documents or each item of information responsive to the request.

Subject to and without waiving its general objections or these specific objections, see the response to Request No.38.



The State will supplement this interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

**REQUEST FOR PRODUCTION NO. 40:** Produce any documents that support the contention that Peterson Farms is causing (or has caused) an imminent and substantial endangerment to the environment in the IRW.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 40:** The State incorporates its general objections set forth herein, and the State further objects that this request seeks information or documents protected by the attorney-client, work product, self-evaluative privilege, or which are made confidential by state law. The State further objects because it seeks documents which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter.

Subject to and without waiving its general objections or these specific objections, see the Response to Request No.38. The State will supplement this interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

**REQUEST FOR PRODUCTION NO. 41:** Please produce any documents that support the contention that the fisheries within the IRW have been impaired by the act or omissions of Peterson Farms.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 41:** The State objects to this request to the extent it seeks information protected by the attorney client privilege or work product protection. Further, the State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B). The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request.

Subject to and without waiving its general objections or these specific objections, the information sought in this request, and whose production is not objected to herein, may be found at the Oklahoma Department of Wildlife Conservation upcoming document production. The State will supplement this request as responsive information is identified.

**REQUEST FOR PRODUCTION NO. 42:** Please produce any documents that relate to the market value of real estate located within five miles of the perimeter of Tenkiller Ferry Lake.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 42:** The State objects to this request on the ground that it is not relevant to the claims and defenses in the present lawsuit.

Further, such information is not maintained in the State’s files and thus the State has no responsive documents.

**REQUEST FOR PRODUCTION NO. 43:** Please produce all documents relating to any communication between the Oklahoma Attorney General or the Office of the Attorney General or any of its attorneys or representatives, and the United States Army Corps of Engineers, which pertain to the Lawsuit.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 43:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item information responsive to the request. The State objects to this interrogatory as it seeks information protected by the attorney client privilege or attorney work product.

Subject to and without waiving its general objections or these specific objections or claim of privilege, the State has not yet produced documents to Defendants from the Office of the Attorney General. Such non-privileged responsive documents will be produced at a time and place agreed to by the parties. To the extent that any copies of such documents were anecdotally kept in any files at agencies where documents have been produced, non-privileged documents were provided for inspection and copying at that agency.

**REQUEST FOR PRODUCTION NO. 44:** Please produce all documents relating to any communication between the Oklahoma Secretary of the Environment or the Office of the Secretary of the Environment or any of its attorneys or representatives, and the United States Army Corps of Engineers, which pertain to the Lawsuit.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 44:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents

or each item of information responsive to the request. The State objects to request to the extent it seeks information protected by the attorney client privilege or work product protection.

Subject to and without waiving its general objections or these specific objections or claim of privilege, all non-privileged responsive documents were produced for inspection and copying at the on-site production for the Office of the Secretary of the Environment. The State will supplement this response should additional responsive information become available.

**REQUEST FOR PRODUCTION NO. 45:** Please produce all documents relating to any communication between the Oklahoma Attorney General or the Office of the Attorney General or any of its attorneys or representatives, and the United States Geological Survey, which pertain to the Lawsuit.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 45:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item information responsive to the request. The State objects to request to the extent it seeks information protected by the attorney client privilege or work product protection.

Without waiving any objection or privilege, the State has not yet produced documents to Defendants from the Office of the Attorney General. Such non-privileged responsive documents will be produced at a time and place agreed to by the parties. To the extent that any copies of such documents were anecdotally kept in any files at agencies where documents have been produced, non-privileged documents were provided for inspection and copying at that agency.

**REQUEST FOR PRODUCTION NO. 46:** Please produce all documents relating to any communication between the Oklahoma Secretary of the Environment or the Office of the

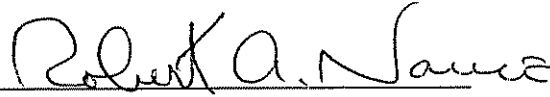
Secretary of the Environment or any of its attorneys or representatives, and the United States Geological Survey, which pertain to the Lawsuit.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 46:** The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item of information responsive to the request. The State objects to this interrogatory as it seeks information protected by the attorney client privilege or attorney work product.

Subject to and without waiving its general objections or these specific objections or privilege, all non-privileged responsive documents were produced for inspection and copying at the on-site production for the Office of the Secretary of the Environment. The State will supplement this response should additional responsive information become available.

Respectfully Submitted,

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Attorneys for the State of Oklahoma

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of June, 2007, I electronically transmitted the attached document to the following:

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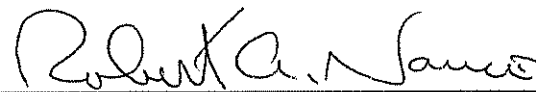
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I hereby certify that on this 1<sup>st</sup> day of June, 2007, I served the foregoing document by U.S. Postal Service on the following:

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WASHINGTON, DC 20005

**C Miles Tolbert**  
Secretary of the Environment  
State of Oklahoma  
3800 NORTH CLASSEN  
OKLAHOMA CITY, OK 73118

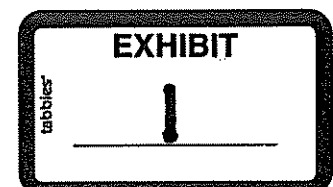
A handwritten signature in black ink, appearing to read "Robert A. Nance", written over a horizontal line.

Robert A. Nance

6/1/2007

*State of Oklahoma v. Tyson, et al.*  
Plaintiff's Document Production Index

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**FILED**

NOV 27 2002

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

THE CITY OF TULSA, and THE TULSA METROPOLITAN UTILITY AUTHORITY,  
Plaintiffs

Vs.

01-CV-900-EAC

TYSON FOODS, INC., COBB-VANTRESS, INC., PETERSON FARMS, INC.,  
SIMMONS FOODS, INC., CARGILL, INC., GEORGE'S, INC., and  
CITY OF DECATUR, ARKANSAS,  
Defendants

**POULTRY DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION AND BRIEF  
FOR PARTIAL SUMMARY JUDGMENT AGAINST POULTRY DEFENDANTS  
ON ISSUE OF LIABILITY FOR GROWERS' DISPOSAL OF POULTRY MANURE  
OR, IN THE ALTERNATIVE,  
MOTION AND BRIEF TO STRIKE PLAINTIFFS' MOTION AND BRIEF FOR  
PARTIAL SUMMARY JUDGMENT AGAINST POULTRY DEFENDANTS**

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Attorneys for George's, Inc. and also  
signing by consent of other Defendants

November 27, 2002



concerning Peterson's knowledge of this practice or that such practice had been going on since the 1950's. (See: Plaintiffs' Motion and Brief in Support, Exhibit 3; Deposition testimony of Peterson employee and grower David Holcombe, pp. 58-59) Plaintiffs also mischaracterize Ron Mullikin's testimony. Mr. Mullikin, a former Peterson employee, not a "Peterson representative" as plaintiffs' denominate Mr. Mullikin, testified that he could only speculate that growers in the Northeast Oklahoma and Northwest Arkansas area had been land applying chicken litter for as long as they had been growing chickens, and that this could have been done for decades. (See: Plaintiffs' Motion and Brief in Support, Exhibit 5; Deposition testimony of Ron Mullikin, pp. 167-169)

4. Plaintiffs' mischaracterize Schaffer's testimony. The poultry industry has been aware of the environmental impact of nitrogen contained in chicken litter since the late 1980s but did not become aware of the environmental impact of phosphorus or phosphates contained in chicken litter until approximately the mid-1990s. (See: Plaintiffs' Motion and Brief in Support, Exhibit 4; Deposition of Tyson Representative, Archie Schaffer, p. 43, lines 20-25) The Poultry Defendants also dispute this paragraph because it mischaracterizes Mr. Simmons' testimony. The question that was posed to Mr. Simmons was a very broad question and did not contain "environmental impact" as a topic, nor did it contain phosphorus as a topic. The portion of Mr. Simmons' deposition which is attached to Plaintiffs' Motion and Brief in Support as Exhibit 7 reflects the true and correct question and answer exchange.

The Poultry Defendants also dispute this paragraph because the Plaintiffs' statement that the "poultry industry has been aware since at least the late 1980's" of potential environmental risks from the land application of chicken manure is misleading





<sup>2</sup> 2015 RELEASE UNDER E.O. 14176

*How can we have  
too much of a good thing?*

Lately, a good deal of concern has been raised about the effects of excess boron in the tap and water of Eastern Oklahoma.

no other do there exist any more, saying:

Problems with some farm manure sources, one of which is the use of poultry litter as an organic fertilizer. However, many other man-made and natural sources provide nutrients to our methods.

The 1.2 million cards that arrive to the U.S. each day depict a considerable amount of materials on the list and in our systems in the form of images. (The computer's smaller, thicker, products list lists three minutes of source data, spending every product 10 possible per day and lists an application guidelines for each item.)

1. High numbers of infectious invertebrate cylindrical nematodes used for epiphytic and bottom plan extraction. Most species can be used to extract some nematodes. *Caenorhabditis* from soil can be used for this purpose; *Caenorhabditis* through the use of highly mobile nematodes.

in short, the number of exposures is not waterlogged as many.

Industry officials say one of the more successful potential avenues to regulate and monitor the poultry industry.

We have recently proposed an executive plan to address security related executive management issues in our Strategic Risk Worksheet. With the support of management, we hope to move forward with this plan.

But a study suggested another plan of insurance reorganization might go beyond one industry and encompass all who contribute to run the building in some way.

We are making a major effort in our industry to manage resources. Now we encourage everyone who has a stake in our land and our waters to join us.



FRI DAY, SEPTEMBER 10, 2004

TULSA WORLD

A9

### Dear Citizens of Oklahoma,

We are the thousands of Oklahomans and Arkansians who work in the poultry industry, providing nutritious chicken and turkey products to families like yours. We are farmers and scientists, live workers and professionals, people just like you who care about the quality of our land, lakes and streams.

That's why we have been working with the State of Oklahoma on a multi-million-dollar voluntary proposal to improve the management of poultry-related nutrients that might find their way into Eastern Oklahoma's Seneca River Watershed. We have delivered this proposal to the Attorney General's Office with our recommendations outlined in detail. Those include:

- Developing a science-based standard for nutrient management that protects our water resources
- Incorporating that new standard into the nutrient-management plan of all poultry farms
- Reducing the amount of poultry litter applied within the watershed by transporting more than 200,000 tons of litter to other areas over the next three years
- Implementing other alternatives for litter management such as turning it into fuel, composting it for export, and processing it into organic fertilizer
- Funding new environmental projects like farmer education programs, research and development, new alternative uses for litter, and matching grants for litter transport
- Creating and funding a non-profit organization to acquire and maintain conservation easements and buffers along streams and then to protect against nutrient run-off and erosion
- Reporting to you how well we're doing, including producing annual reports for both Oklahoma and Arkansas

Along with measures we've already implemented, these steps will help us and eastern growers best manage all poultry litter in order to protect these Seneca River Watersheds. But that's not all. We would also consider matched economic incentive action and the retention of these incentives in order. Oklahoma watershed, provided we can reach an agreement with the Attorney General on the specifics.

Our Seneca River Watershed are complex environments that include many sources of nutrients that potentially impact the health of the stream and streams that lie within them. We are prepared to do our part to take care of the poultry portion of the nutrient equation. To see exactly how we plan to do that, please call 800-457-6160 for a copy of our full proposal.

We look forward to working with the Attorney General and the good people of Oklahoma to protect our natural resources while preserving the vital contribution poultry makes to the Oklahoma economy.

EXHIBIT

4

tabbies

TULSA WORLD

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- Creating and funding a non-profit organization to acquire and maintain conservation easements and buffers along streams and rivers to protect against nutrient run-off and erosion
- Reporting to you how well we're doing, including producing annual reports for both Oklahoma and Arkansas

Along with measures we've already implemented, these steps will help us and our partners best manage all poultry litter in order to protect these Scenic River Watersheds. But that's not all. We would also consider watershed assessments, corrective action and the extension of these initiatives into other Oklahoma watersheds, provided we can reach an agreement with the Attorney General on the specifics.

Our Scenic River Watersheds are complex environments that include many sources of nutrients that potentially impact the health of the rivers and streams that lie within them. We are prepared to do our part to take care of the poultry portion of the nutrient equation. To see exactly how we plan to do that, please call 800-592-6160 for a copy of our full proposal.

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Gallini

Ongly Turkey Production, LLC

GEORGE'S



Simmons